



STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

CLAIMANT: Marie Gleason

DECISION NO.: 1033-BH-81

DATE: Oct. 28, 1981

APPEAL NO.: 14494

S. S. NO.: 216-03-3750

EMPLOYER: Wm. J.-Gleason & Sons Inc.

L. O NO: 1

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant was unemployed within the meaning of Section 20(1) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Marie Gleason - Claimant

Marie T. Gleason -
Treasurer

EMPLOYMENT SECURITY ADMINISTRATION
John Zell - Legal Counsel

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeals file.

FINDINGS OF FACT

The Claimant is president of William J. Gleason and Sons, Incorporated. The business was founded by the Claimant's late husband in 1953. The business was incorporated in 1971. When her husband died, the Claimant became president of the corporation. The Claimant owns 25% of the stock of the corporation and is also a director of the corporation.

In recent years, the corporation has employed five persons. Of these five persons, four are corporate officers. The five persons were the Claimant, her daughter, her two sons and her daughter's husband. Her daughter's husband was the only employee who was not a corporate officer.

The Claimant's job was to perform clerical duties and duties as an office supervisor for the corporation at a salary of \$300.00 per week.

Because of a slowdown in business, the corporation had to lay off two employees. The Claimant and the Claimant's daughter's husband were chosen to be laid off. The Claimant's daughter and sons made the decision to lay her off.

Although the Claimant remains the president and the director of the corporation, she no longer performs any functions for the corporation, nor does she visit the business at all. The Claimant has no administrative or clerical duties as president and director of the corporation. She receives no pay for either of these positions.

CONCLUSIONS OF LAW

The Claimant is unemployed within the meaning of Section 20(1) of the Law. In the Fourtinakis case, Board Decision No. 870-BH-81, the Board held that the crucial test of whether a person meets the definition of unemployment is "whether an individual has performed services with the respect to which wages are paid or payable" in the appropriate week.

As that case pointed out, there is often some connection remaining between a laid off employee and his or her employer. Such a connection is not relevant to Section 20(1) of the Law unless the Claimant is performing services for which wages are paid or payable.

The only further question is whether the Claimant's status as a corporate officer should, in and of itself, disqualify her from benefits on the basis of Section 20(1) of the Law. That section, of course, contains no mention of corporate officers, nor any other language which, on its face, would disqualify this Claimant.

Since Section 20(1) contains no provision which would disqualify the Claimant solely because she is a corporate officer, the Board declines to read such a disqualification into the statute. The Maryland Court of Appeals has specifically disapproved of the practice of reading disqualifications into the Unemployment Insurance Law based on policy where such disqualification are not found in the statute itself.

In Claudine Allen v. Core Target City Youth Program, 275 Md. 69, 76 (1975) the Court that the general policies behind the Law do not justify the creation of "affirmative disqualifications . . . without regard to the other express provisions in Section 6 of the Act, providing disqualification for benefits." Although that case dealt with Section 6 of the Law, the strong disapproval of agency-created "affirmative disqualifications" expressed there applies equally to Section 20(1). The Board will not apply Section 20(1) to mean that an affirmative disqualification exists for being a corporate officer.

Legitimate questions, of course, may arise with regard to unemployed- corporate officers. They may have, without good cause, engineered the decision to lay themselves off, and thus be ineligible under Section 6(a). They may not be honestly seeking work within the meaning of Section 4(c). Because of the possibilities for manipulation of the unemployment system by corporate officers, these possibilities should be checked carefully in this type of case.

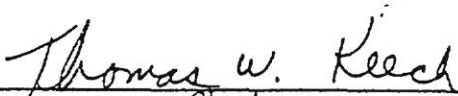
In this particular case, however, there is not any evidence before the Board that the Claimant should be disqualified under Section 6(a). The Board concludes, however, that a remand to the Claims Examiner, for a determination under Section 4(c) of the Law is warranted.

DECISION

The Claimant was unemployed within the meaning of Section 4 and 20(1) of the Maryland Unemployment Insurance Law. She is eligible for benefits from January 30, 1981, if she is otherwise eligible under the Law.

The decision of the Appeals Referee on this issue is reversed.

This case is remanded to the Local Office for a determination under Section 4(c) of the Law.


Chairman


Associate Member

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DATE OF HEARING: August 11, 1981

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John Zell - Legal Counsel

UNEMPLOYMENT INSURANCE - BALTIMORE



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BOARD OF APPEALS

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SEVERN E. LANIER
Appeals Counsel

GARY SMITH
Chief Hearings Officer

- DECISION -

DATE: April 27, 1981

APPEAL NO.: 14494

S.S.NO.: 216-03-3750

L.O.NO.: 1

APPELLANT: Claimant

CLAIMANT: Marie Gleason

EMPLOYER: Wm. J. Gleason & Sons Inc.

ISSUE: Whether the claimant was unemployed within the meaning of
Section 20(1) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY. REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

May 12, 1981

- APPEARANCES -

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Marie T. Gleason
Treasurer

FINDINGS OF FACT

The claimant began working for the employer at the time the business Wm. J. Gleason & Sons Inc. was founded in 1953. The business was started by the claimant's husband, now deceased, and she did office work for the business. At the time of her separation from the employment effective January 29, 1981 the claimant was a full-time employee and President of the employer.

The claimant's separation was due to a slow down in the business and the separation was mutually decided among the family, including the claimant, who are stock holders and officers of the firm. The claimant owns 25% of the stock of the business, was president at the time of her separation and is a director.


COMMENTS

The non-monetary determination of the Claims Examiner that the claimant was not unemployed within the meaning of Section 4 and 20(1) of the Maryland Unemployment Insurance Law is supported by the testimony of the claimant and the employer. The claimant, who was president of the corporation at the time of her separation and a 25% stock holder and remains in that capacity eventhough she is off of the payroll, participated in the decision that she should be separated and remains attached to the employment until economic conditions improve to the extent that she can again be placed on the payroll. It is for this reason that the claimant must be held not unemployed and the determination of the Claims Examiner affirmed.

DECISION

The claimant was not unemployed within the meaning of Section 4 and 20(1) of the Maryland Unemployment Insurance Law. The claimant is disqualified from January 30, 1981 and until not employed.

The non-monetary determination is affirmed.


Gerald E. Askin
Appeals Referee

Date of Hearing: 4/15/81

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Copies mailed to:

Claimant

Employer

Unemployment Insurance - Baltimore